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quired to refund such amount to the brokers, where his client's financial position was such that the obligation would have been worth something to him if it had not been released, as, if the indebtedness was unliquidated, the agreement fixing its amount constituted an accord, which was executed by the application of the money to its satisfaction and the creditor's complete acquittance of the debtor, while, under Code, § 5765, if the indebtedness was liquidated, such application of the money was an express acceptance thereof in full satisfaction of the debt and completed an accord and satisfaction, which could not be rescinded by the creditor without the debtor's consent, and hence extinguished the obligation.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 876.]

Error to Circuit Court of City of Alexandria.

Action by William B. Hibbs and another, partners trading as W. B. Hibbs & Co., against the First National Bank of Alexandria and another. Judgment for defendants, and plaintiffs bring error. Affirmed.

*C. E. Nicol*, of Alexandria, for plaintiffs in error.

*Jas. R. Caton* and *Gardner L. Boothe* both of Alexandria, for defendants in error.

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SIMS v. CAPPER et al.

June 15, 1922.

[112 S. E. 676.]

**1. Exceptions, Bill of (§ 23\*)—Skeleton Bill of Exceptions with Evidence Attached Held Compliance with Statute.**—Where the trial judge signed a skeleton bill of exceptions within the time required by Code 1919, § 6252, in which the evidence was referred to by provisions in parentheses indicating the place to insert it, and on the same date the judge indorsed on the back of a typewritten report of all the evidence an identification thereof, which was sufficient to authorize the clerk to copy the evidence into the skeleton bill of exceptions, there was sufficient compliance with the statutory requirements.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 392.]

**2. Appeal and Error (§ 1001 (1\*))—Verdict Cannot Be Disturbed if Supported by Any Evidence.**—A verdict for defendants in ejectment, based on their claim by adverse possession, cannot be disturbed on appeal if there is any evidence before the jury sufficient to show such title by adverse possession.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

**3. Adverse Possession (§ 68\*)—Possession Must Be Accompanied by Claim of Title.**—No title by adverse possession can be acquired,

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

however long the mere possession continues, unless the possession is accompanied by claim of title for the statutory period, since the claim of title is as essential as the possession.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 205.]

**4. Adverse Possession (§ 68\*)—Claim of Title May Be Applied.—**

The claim of title necessary to establish adverse possession need not be expressed, but may be inferred from conduct which is unequivocal and is inconsistent with any other reasonable inference, as, for example, possession held under a deed purporting to convey title.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 205.]

**5. Adverse Possession (§ 85 (5)\*)—Undisputed Evidence Held Not to Show Possession by Defendant's Predecessor Was under Claim of Title.—**

Where defendants had been in possession of property to which plaintiff held the record title for only two years, but their predecessor in title had been in possession for more than 40 years, evidence that the predecessor took possession under a written permit to erect a building on the tract and had never claimed to own the land occupied by the building, though he did claim the building, but instead had admitted a short time before his death that he had no title to the land, and in devising the property to defendant he described it only as a house, is insufficient to show a claim of title by defendant's predecessor, and does not sustain a verdict awarding the title to her.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 226.]

**6. Boundaries (§ 3 (6)\*)—Acreage Yields to Description of Lines Located on Ground.—**

The fact that the acreage of the tract included within plaintiff's boundaries exceeded that stated in her instruments of title does not disprove her title to a portion of the tract in possession of defendants' predecessor by permission, since the statement of acreage is the least reliable of all evidences of the true location of land described, and where the boundary lines called for in the description are located on the ground in accordance with the calls, those lines fix the location of the land irrespective of the acreage.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 600.]

**7. Ejectment (§ 95 (1)\*)—Descriptions in Deeds Held to Show Land in Controversy Was Embraced in Chain of Title.—**

Where plaintiff in ejectment proved by surveyors that the land in controversy was included in the description of land conveyed to her, and traced her title of record from the commonwealth by deeds, the descriptions in which were sufficient to show that they referred to the same land as that conveyed by the deed to plaintiff, it was unnecessary to prove by surveyors that the preceding deeds in the chain of title covered the land in controversy.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 910.]

Error to Circuit Court, Arlington County.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Ejectment by Laura B. Sims against Clendenning Capper and another. Judgment for defendants, and plaintiff brings error. Reversed, and judgment rendered for plaintiff.

*James Sherier*, of Washington, D. C., and *Amos C. Crounse* of Clarendon, for plaintiff in error.

*Crandall Mackay*, of Washington, D. C., for defendants in error.

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STARKE et ux. v. STARKE et al.

June 15, 1922.

[112 S. E. 680.]

**1. Appeal and Error (§ 1009 (3)\*)—Finding on Conflicting Oral Testimony Entitled to Great Weight.**—Finding of trial court on conflicting oral testimony in an equity case is entitled to great weight on appeal, and will not lightly be set aside.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

**2. Appeal and Error (§ 717\*)—Decree Controlling on Meaning of Trial Court's Opinion.**—As against appellants' contention that the trial court's opinion shows it found in their favor, and then decreed in appellee's favor, its decree, being simply its interpretation of its opinion, and a finding on the facts in favor of appellees, is its authoritative and effectual opinion and judgment.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 609.]

**3. Specific Performance (§ 121 (1, 4)\*)—Proof of Contract Must Be Positive; Conflicting Testimony of Parties Not Sufficient Proof of Oral Contract for Land.**—Those seeking specific performance of an alleged oral contract as to land partly performed have the burden of proving the contract by clear and convincing evidence, which is not satisfied where there is merely the positive conflicting testimony of the parties.

Sims, J., dissenting in part.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 710.]

Appeal from Circuit Court, Culpeper County.

Suit by H. Mason Starke and wife against Bruce Starke and others. Decree for complainants, and defendants appeal. Affirmed.

*Grimsley & Miller*, of Culpeper, for appellants.

*E. H. Gibson* and *Waite, Perry & Nottingham*, all of Culpeper, for appellees.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.